Approved For Release 2005/01/06 : CIA-RDP81M00980R000200010049-6

OLC #77-1430

11 April 1977

MEMORANDUM FOR: Legislative Counsel

25X1 ATTENTION : [redacted]

25X1 FROM : [redacted]
Assistant for Information, DDA

SUBJECT : Problems Confronting the CIA Resulting From the Freedom of Information Act

1. The DDA concurs in the draft memorandum with enclosure which OLC proposes to submit to Congressman Price and Senator Inouye relating to the problems posed by FOIA.

2. In discussions with OLC, we understand that some thought has been given to the inclusion in the letters to Congress of specific remedial language. Our position coincides with that which we understand is held by Mr. Lapham, the General Counsel, that the forwarding of specific language would be counterproductive in that it would invite criticism of such language as opposed to a constructive attempt to develop amendments to the Act. 25X1

[redacted]

Attachment:
Draft Memo w/encl.

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Executive Registry
75-3527/A

OLC 75-1942/a

DD/A 75-4470

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

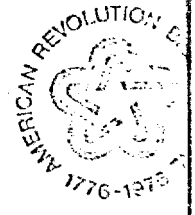
19 SEP 1975

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. A number of foreign intelligence services with which we work have expressed serious concern as to whether the Agency can protect their secrets. Sensitive sources fear possible disclosure of their identity. Further, if the demands continue at the current rate, the drain on our manpower will be such that the Agency will find it difficult to effectively carry out certain of its statutory responsibilities to the President and the National Security Council and indeed its responsibilities to the Congress.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's classification system, handled the requests. With the effective date of the amended Freedom of Information Act in February 1975, the attendant publicity, and the strong interest in CIA which developed at about the same time, the receipt of requests for documents and records changed drastically. To date, the Agency has received about 6,500 requests. The number of man-hours presently devoted to Freedom of Information requests are equivalent to 100 full-time employees. This figure has been steadily increasing. Regardless, we are making every effort to be responsive within a reasonable time frame, but we simply cannot meet the ten-day deadline to respond to requests as required under the amended Act.



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The large majority of requests received are for any information maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. Section 552(a)(3) was amended to require an agency to promptly submit records which a requester "reasonably describes." The exact title and description of the document are not necessary. Requests for documents are now being received under a broad identifiable subject. For example, one request is for "all files of" at least 25 or 30 specific items. The estimate to process this request involves a search of over 14,000 linear feet of files requiring the full-time services of over 100 professionals and several months of work. Another seeks records of "all expenditures" of CIA since its inception.

It should be emphasized, that the above statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations are handled by the Deputy Directors. The number of appeals have been steadily increasing (now over 170 cases) and the time required of the Deputy Directors for attention to these matters has also increased. Further, a decided factor in the review time expended is the requirement to release "reasonably segregable portions" of a document. Because of this provision, the review process is greatly aggravated in that a document must be examined in its entirety and withhold and release decisions made as to each reasonably segregable portion. The demands upon the Deputy Directors are diverting them from priority matters of Agency management and substantive intelligence. This drain on management is being felt throughout the organization. Yet the amended Act in no way acknowledges this drain and specifically does not authorize agencies to charge any fees for review time expended.

The search and review of intelligence documents involves more time and effort than nonintelligence documents. Releasability of an intelligence document cannot be determined by a review of the document alone. There is the added factor of protecting the intelligence sources and methodology involved. The reviewer must initiate a search and examine all source material to assure that all intelligence sources and methods involved which require protection are not compromised. This additional review is most critical and must be done carefully. Unfortunately, critical decisions as to withholding or releasing documents and information must be made under pressing deadlines.

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The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are twenty-three cases in litigation. This has caused a large drain on the Office of General Counsel requiring the addition of more lawyers. About a fourth of that office is devoted to Freedom of Information cases and even this effort is inadequate.

The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the 1973 decision of the Supreme Court in the Mink Case by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The decision of the court, therefore, is the final determinant as to the public releasability of sensitive information. Yet, there is a line of cases, e.g., C & S Airlines v. Waterman Corporation 333 U.S. 103 (1948), in which the courts have acknowledged their inability and lack of expertise to make proper judgments in the area of national security and foreign relations. Decisions of the court in certain instances may very well conflict with the statutory responsibility of the Director of Central Intelligence under the National Security Act of 1947 to protect intelligence sources and methods. The Senate Judiciary Committee recognized the concern of CIA and other security agencies on 16 May 1974 when it reported out S. 2543, the Senate version of the Freedom of Information Act amendments. This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.

Under the National Security Act of 1947, the Director of Central Intelligence was established to serve as the senior intelligence officer for the President and the National Security Council to coordinate the intelligence efforts of all U.S. intelligence agencies, thus to insure the accurate and timely dissemination of vital national intelligence required by the policymakers. Though our enabling legislation clearly places no direct responsibility on the Agency to furnish information to the public, we clearly recognize that there must be an informed public and there are programs whereby unclassified information is published. I feel, however, that it does not serve the public interest to place statutory demands on the Agency to provide information to any requester, regardless of the purpose of the request and the time involved. To the contrary, it works against the public interest when such demands make it difficult for the Agency to carry out its basic mission.

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The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, legislative action along these general lines:

a. Establish statutory court review procedures paralleling the concepts set forth in S. 2543, described above, whereby a court in its review would be required to give sufficient weight of evidence to an affidavit submitted by the head of an agency attesting that the documents should be withheld under the criteria established by Executive order or statute to be kept secret in the interest of national security or foreign policy under exemptions (b)(1) and (b)(3) of the Freedom of Information Act, as amended. The court would be required to sustain such withholding unless following its in camera examination, it finds the withholding is without a reasonable basis under such criteria.

b. Amend the requirement to respond in ten days to reasonably reflect the number of man-hours involved. An amendment establishing a criteria of reasonableness would accommodate the widespread variance in requests and would recognize those circumstances where due to the overwhelming volume of requests received, agencies cannot meet the short deadline despite their conscious efforts to do so.

c. The Congress assess the expenditures of manpower and money and the effect on the Agency's ability to carry out certain of its statutory responsibilities and its responsibilities to the Congress. The Congress consider either limiting the scope of requests or establishing a criteria to assure that broad demands are clearly in the public interest. In this regard, the position of the Agency be given due weight to offset the present situation whereby all of the equities are in favor of the requester.

We would be pleased to discuss this matter with you or a member of your staff should you so desire. Your personal interest is most appreciated and it is our hope that your concern is sufficiently shared so that some remedial action can be taken.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

Distribution:
Orig. - Addressee
1 - DCI
1 - DDCI
1 - ER
1 - DDA
1 - C/IRS 1 - OGC
1 - OLC/Subj. w/basic

ER

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25X1

OLC/PLC/ (12 Sept. 1975)

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. A number of foreign intelligence services with which we work have expressed serious concern as to whether the Agency can protect their secrets. sensitive sources fear possible disclosure of their identity. Further, if the demands continue at the current rate, the drain on our manpower will be such that the Agency will find it difficult to effectively carry out certain of its statutory responsibilities to the President and the National Security Council and indeed its responsibilities to the Congress.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's classification system, handled the requests. With the effective date of the amended Freedom of Information Act in February 1975, the attendant publicity, and the strong interest in CIA which developed at about the same time, the receipt of requests for documents and records changed drastically. To date, the Agency has received about 6,000 requests. The number of man-hours reported as being devoted to Freedom of Information requests are equivalent presently to 100 full-time employees. This figure has been steadily increasing.

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Regardless, we are making every effort to be responsive within a reasonable time frame, but we simply cannot meet the ten-day deadline to respond to requests as required under the amended Act.

The large majority of requests received are for any information maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. Section 552(a)(3) was amended to require an agency to promptly submit records which a requester "reasonably describes." The exact title and description of the document are not necessary. Requests for documents are now being received under a broad identifiable subject. For example, one request is for "all files of" at least 25 or 30 specific items. The estimate to process this request involves a search of over 14,000 linear feet of files requiring the full-time services of over 100 professionals and several months of work. Another seeks records of "all expenditures" of CIA since its inception.

It should be emphasized, that the above statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations are handled by the Deputy Directors. The number of appeals have been steadily increasing (now over 160 cases) and the time required of the Deputy Directors for attention to these matters has also increased. Further, a decided factor in the review time expended is the requirement to release "reasonably segregable portions" of a document. Because of this provision, the review process is greatly aggravated in that a document must be examined in its entirety and withhold and release decisions made as to each reasonably segregable portion. The demands upon the Deputy Directors are diverting them from priority matters of Agency management and substantive intelligence. This drain on management is being felt throughout the organization. Yet the amended Act in no way acknowledges this drain and specifically does not authorize agencies to charge any fees for review time expended.

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The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are twenty-one cases in litigation. This has caused a large drain on the Office of General Counsel requiring the addition of more lawyers. About a fourth of that office is devoted to Freedom of Information cases and more is needed.

The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the 1973 decision of the Supreme Court in the Mink Case by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The decision of the court, therefore, is the final determinant as to the public releasability of sensitive information. Yet, there is a line of cases, e.g., C&S Airlines v. Waterman Corporation 333 U.S. 103 (1948), in which the courts have acknowledged their inability and lack of expertise to make proper judgments in the area of national security and foreign relations. Decisions of the court in certain instances may very well conflict with the statutory responsibility of the Director of Central Intelligence under the National Security Act of 1947 to protect intelligence sources and methods. The Senate Judiciary Committee recognized the concern of CIA and other security agencies on 16 May 1974 when it reported out S. 2543, the Senate version of the Freedom of Information Act amendments. This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.

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The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, the following remedial legislation:

a. Establish statutory court review procedures paralleling the concepts set forth in S. 2543, described above, whereby a court in its review would be required to take judicial notice of an affidavit submitted by the head of an agency attesting to the sensitivity of the information involved. A proposed amendment accomplishing this is enclosed.

b. Extend the ten-day period during which an agency must respond to more reasonably reflect the number of man-hours involved. A sixty-day period would not seem unreasonable or perhaps a temporary moratorium by the Congress is necessary.

c. Establish a clearly stated criteria of reasonableness upon requests for documents to preclude omnibus demands such as "all files" on particular subjects.

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We would be pleased to discuss this matter with you or a member of your staff should you so desire. Your personal interest is most appreciated and it is our hope that your concern is sufficiently shared so that some remedial action can be taken.

Sincerely,

W. E. Colby
Director

Enclosure

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PROPOSED AMENDMENT
FREEDOM OF INFORMATION ACT
(Section 552 Title 5)

Add as a new section 552 (a)(4)(C). Reletter existing paragraphs 552 (a)(4)(C) through (G) as 552 (a)(4)(D) through (H) respectively.

"(C) In determining whether a document is in fact specifically required by an Executive order or statute to be kept secret in the interest of national security or foreign policy, a court may review the contested document in camera if it is unable to resolve the matter on the basis of affidavits and other information submitted by the parties. In conjunction with its in camera examination, the court may consider further argument, or an ex parte showing by the Government, in explanation of the withholding. If there has been filed in the record an affidavit by the head of the agency certifying that he has personally examined the documents withheld and has determined after such examination that they should be withheld under the criteria established by statute or Executive order to be kept secret in the interest of national security a foreign policy under subsections (b)(1) and (b)(3) of this section, the court shall sustain such withholding unless, following its in camera examination, it finds the withholding is without a reasonable basis under such criteria."

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DRAFT: PLC: cmw (typed 12 August 1975)

Honorable John M. Ashbrook
House of Representatives
Washington, D. C. 20515

Dear Mr. Ashbrook:

This is in reply to your letter of 15 July 1975 inquiring as to whether the recent amendments to the Freedom of Information Act have adversely affected the Agency and what amendments we might propose.

The amended Freedom of Information Act is seriously affecting the operations of this Agency. If the demands continue at the current rate, the drain on our manpower will be such that the Agency will not be able to effectively carry out its statutory responsibilities to the President and the National Security Council and indeed to the Congress. Equally important is the effect on our intelligence sources and cooperating individuals. A number of foreign intelligence services with which we work have expressed serious concern that the Agency can protect their secrets. Sensitive sources fear possible disclosure of their identity.

Prior to the effective date of the amendments to the Freedom of Information Act, CIA received few requests for documents and records. In 1974, only 193 requests were processed and the large majority of these were submitted under Executive Order 11652, "Classification and Declassification of National Security Information and Material." A staff of five people, who also monitored the Agency's classification system, handled

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To date, the Agency has received about 5,000 requests. Most requests are for any files maintained on the requester. A substantial number involve requests for substantive information and a significant number of these have involved omnibus demands for records requiring a heavy commitment of manpower. The estimate to process one request involves a search of over 14,000 linear feet of files at a cost of over a million dollars. The number of man-hours reported as being devoted to Freedom of Information requests are equivalent presently to 100 full-time employees. This figure has been steadily increasing. Regardless, we are making every effort to be responsive within a reasonable time frame.

It should be emphasized, however, that these statistics do not take into account one of the most significant aspects--the time devoted by the senior executives of the Agency. Decision-making in these matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements that the law demands. Appeals of initial Agency determinations

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The review of intelligence documents involves more time and effort than is realized by those not familiar with the intelligence process. Releasability of an intelligence document cannot be determined by a review of the document alone. There is the added fact of protecting the intelligence sources and methodology involved. The reviewer must examine all source documents to assure that all intelligence sources and methods involved which require protection are not compromised. This additional review is most critical and must be done carefully.

The amended Act establishes a ten-day period during which agencies must respond to a request. Under the law, the requester may consider failure to respond in the ten-day period as a formal denial and may sue forthright. This threat of litigation is being faced in a large number of requests. Presently, there are fifteen cases in litigation.

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The court review procedures in the amended Act seriously jeopardize the protection of sensitive intelligence. The amended Act overrides the decision of the Supreme Court in the Mink Case in 1973 by authorizing the courts to make their own determinations that the information at issue is or is not national security information and whether disclosure would be damaging to the national security. The judgment of the court is, therefore, the final determinant as to the public releasability of sensitive information. Yet there is a line of cases in which the courts have acknowledged their inability and lack of expertise in the area of national security and foreign relations. Judgments of the court in certain instances may very well conflict with my statutory responsibility under the National Security Act of 1947 to protect intelligence sources and methods. The Agency can hardly assure a sensitive clandestine source the protection of his identity or a foreign liaison service the protection of its information when Agency decisions not to disclose are subject to overrule by a court. The Senate Judiciary Committee recognized the concern of security agencies when it reported out S. 2543, the Senate version of the Freedom of Information Act amendments, of 16 May 1974. This version provided procedures whereby the court must take cognizance of an affidavit of an agency head in its review of national defense or foreign policy information and cannot overrule an agency head decision unless it is found to be without a reasonable basis.

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The optimum remedial legislation for the Agency would, of course, be a total exemption. It is recognized, however, that under the present climate such action would be most difficult to achieve. I would urge, therefore, the following remedial legislation:

a. Establish statutory procedures as set forth in S. 2543, described above, whereby a court in its review would be required to take judicial notice of an affidavit submitted by the head of an agency attesting to the

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sensitivity of the information involved. A copy is enclosed.

b. Extending the ten-day period during which an agency must respond to more reasonably reflect the number of man-hours involved. A ninety-day period would not seem unreasonable.

I would be pleased to have Mr. George L. Cary, my Legislative Counsel, discuss this matter personally with you should you so desire.

Your personal interest in the problems faced by the Agency under this amended law is most appreciated. I would hope that this concern is shared by other Members of the Congress and that the seriousness of the situation will be recognized and prompt remedial action taken.

Sincerely,

W. E. Colby
Director

Enclosure

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DD/A 75-3513

29 July 1975

MEMORANDUM FOR: Legislative Counsel

25X1 ATTENTION : [redacted]

SUBJECT : FOIA Impact

1. Attached is a draft of a paper which I have prepared for possible use in response to Congressman Ashbrook's request and for other uses as may be appropriate.

2. Since the paper has been prepared for multiple uses, it may not be appropriate in its present form for the specific reply to Congressman Ashbrook. However, I find that it is not possible to reflect accurately the impact of FOIA on the Agency by simply using a statistical approach. Looked at from the point of view of an outsider, 5,000 requests and the devotion of 100 people to responding may not seem unduly out of line. However, when you combine these figures with a description of the impact of FOIA on senior management and on our efforts to fulfill our responsibilities for the protection of true secrets, I believe the picture comes into focus.

25X1

[redacted]

Assistant to the DDA

cc: DDA
OGC
C/IRS

25X1 AI/DDA: [redacted] (29 July 1975)
Distribution:
Original - Addressee w/Att.
1 - DDA w/Att.
25X1 1 - OGC [redacted] w/Att.
1 - C/IRS w/Att.
1 - HGB Chrono w/o Att.

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The FOIA and CIA

1. The Statistical Picture

a. Prior to the effective date of the 1974 amendments to the Freedom of Information Act, CIA received few requests for documents and records. For example, in CY 1974 only 193 requests were processed and, by far, the majority of these were levied under the provisions of Executive Order 11652 and did not involve the extreme deadlines imposed by the amended FOIA. A small branch existed in the Office of the Deputy Director for Administration to process these requests for records and most of the material requested was released either in full or in part. The manpower commitment involved in handling these requests was small with but five full-time employees assigned to handle requests for documents and information in addition to monitoring the Agency's classification system and programs. Individual cases were routed to specific components of the Agency which had the requested documents in their possession, and with the small volume of requests the burden on these components was nominal.

b. With the effective date of the amended Freedom of Information Act in February 1975 and with the abnormal

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publicity and interest in CIA which has developed since December 1975, the statistical picture has changed dramatically. The Agency has received approximately 5,000 FOIA and Executive Order requests since the first of the year. While many of these have had to be returned to the requester for additional identifying data, approximately 4,000 have been put into process to date. The majority of the requests are for files maintained on the requester, a relative, or an organization with which he is affiliated. The high volume of such requests appears to have been generated by the publicity given the Agency in recent months and in a great number of cases by the extensive mailing campaigns supported by several organizations as well as public exhortations by certain prominent figures. Approximately 350 of the requests put in process have dealt with information of a more substantive nature, and a significant number of this latter category of requests has involved omnibus demands for records requiring a heavy commitment of manpower.

2. Agency Preparation and Organization

a. While the Agency did not entirely anticipate the volume of requests with which we are now faced, it did realize early on that the amendments to the FOIA would substantially increase the requests being made to the Agency for documents and records. Starting in November 1974,

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extensive and concentrated efforts were undertaken to prepare the Agency for the February effective date of the amendments. Both internal and public regulations and procedures were written, a centralized staff was established to receive and process requests, an appeal mechanism was established, and FOIA officers were designated and trained in all Agency components. In certain Agency components where it could be anticipated that the workload from FOIA would be unusually heavy, personnel were diverted from their normal assignments to handle these matters as they arose. A series of briefings was conducted at all levels and components of the Agency and the subject of the FOIA was interjected into appropriate Agency training courses.

b. Notwithstanding these preparations, the ever-increasing volume of requests has steadily exceeded the Agency's ability to respond within the strict deadlines imposed by the Act while at the same time conducting a thorough, professional search and review of the material involved. The decentralized nature of Agency records systems and the compartmentation which is normal to intelligence operations necessitate the sending of most requests to a variety of offices for search, review and decision making. Additionally, the sophisticated system of indexing and cross-indexing employed in Agency records

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systems usually requires extensive leg work to insure that no meaningful documents pertaining to a request are overlooked. The combination of the high volume of requests and the work involved has resulted in a situation where the 10-working-day initial request period can usually accommodate only those requests where the Agency has no record material.

3. The Burden

a. The current burden resulting from the FOIA workload is felt to some extent throughout the Agency and in a truly hardship degree in certain critical components. Given the nature of the majority of the requests being received, the heaviest responsibility for the search and review of records falls on the Office of Security and the Directorate of Operations. In both of these Agency components it has been necessary to divert substantial numbers of personnel from their primary assignments to assist in the processing of FOIA requests. The Office of Security has even assigned field personnel to the Washington headquarters in a temporary duty status to perform FOIA work; such diversion, while absolutely necessary, nonetheless slows the accomplishment of field investigative work. Both the Directorate of Operations and the Office of Security have been obligated to establish FOIA staffs to coordinate the work being done on the high number of cases for which they are responsible.

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b. Speaking to the Agency as a whole, our manpower commitment to FOIA is such that the manhours reported as being devoted to FOIA are the equivalent to 100 full-time employees. It should be emphasized, however, that these statistics do not take into account that personnel commitment which must be considered as one of the most significant aspects of the FOIA burden -- the time devoted to FOIA and related matters by the senior executives of the Agency. Given the administrative arrangements established by the Agency, the decision-making level in FOIA matters is maintained at a high level to insure that these important decisions receive the attention that both the Agency's responsibilities and the requirements of the law demand. In the initial request phase, such decisions are the responsibility of the office directors. Upon appeal, decisions are elevated to the level of the six Deputy Directors of the Agency. Since the number of appeals submitted to the Agency has been steadily increasing and is now approaching 150 cases, the time required of the Deputy Directors for attention to these matters has also increased. They meet weekly as the Information Review Committee to handle such appeals and are additionally required to spend time individually both in preparation for the meetings and in dealing with particular cases. Since by the very nature of their assignments these

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are officers with no spare time, the requirements imposed by FOIA are diverting them from priority matters of Agency management and substantive intelligence.

c. The above speaks to the initial request and appeal phases of FOIA in the Agency. We are now entering the third phase in that 14 suits have been filed in Federal court as the result of appeal denials. Each of these suits will require extensive preparation on the parts of both the Agency's legal personnel and other individuals involved in the FOIA process. Here, again, we anticipate that the most significant burden will be at the very senior level. Our past experience in litigation indicates that it is normal for senior Agency officials involved in the matter being litigated to have to prepare affidavits and depositions as well as having to possibly appear as witnesses in particular instances. Even more so than in the earlier phases of FOIA, we anticipate that the requirements in the litigation phase will seriously jeopardize our ability to conduct the basic mission of the Agency.

d. In addition to the burden FOIA presents as regards time and manpower, there is the added stress it places on our efforts to protect information warranting protection. While the FOIA provides exemptions designed to protect certain categories of information, we have little doubt but that some information that should be kept secret

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and other "sunshine in government" legislation and practices will eventually render the Agency impotent. Debate is now occurring on the basic question of the nature of Government intelligence activities in an open society such as ours. However, most reasonable persons engaged in this debate agree that our Government must conduct secret intelligence activities and that properly secret information must be protected. The thrust and spirit of FOIA is such that it runs contrary to this concept.

b. The need for secrecy notwithstanding, the public does have legitimate needs for certain types of information either now possessed by the Agency or which will be generated by it in the future. For example, historians, journalists and the like must have available to them a system for obtaining information pertaining to Agency activities and the intelligence it produces where the need for protection of such information no longer exists. Likewise, the general public must be in a position to insure that its government and individual components thereof are not abusing their powers and infringing upon the rights of individual citizens. We contend that systems which will satisfy these basic requirements either exist now or will in the immediate future. The provisions of Executive Order 11652 do, indeed, provide a system whereby historians, journalists and others may

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will be made public. We are faced with a situation at present where the shear volume of requests being processed is resulting in errors, oversights, and hasty decisions. Even setting aside the effects of haste and errors, we believe that the cumulative effect of the disclosures being made is erosive of our overall security. Lastly, in the area of security, it can be anticipated that in particular instances we will be compelled in the courts to release information which should be protected but which may not meet the technical requirements of the exemptions provided by the law.

4. Recommended Relief

a. While the Agency continues to make adaptations in organization, systems and personnel commitments in order to better cope with the requirements of FOIA, it becomes increasingly clear that the requirements of the law as it is now written place burdens on CIA which interfere with the organization's ability to conduct its basic mission. Secrecy is an absolutely unavoidable aspect of intelligence activities of this Nation's intelligence services and in relationship to those vital liaison relationships conducted on the basis of mutual confidentiality with friendly foreign governments. Continued erosion of the Agency's ability to maintain proper secrets because of the requirements of FOIA

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b. The need for secrecy notwithstanding, the public does have legitimate needs for certain types of information either now possessed by the Agency or which will be generated by it in the future. For example, historians, journalists and the like must have available to them a system for obtaining information pertaining to Agency activities and the intelligence it produces where the need for protection of such information no longer exists. Likewise, the general public must be in a position to insure that its government and individual components thereof are not abusing their powers and infringing upon the rights of individual citizens. We contend that systems which will satisfy these basic requirements either exist now or will in the immediate future. The provisions of Executive Order 11652 do, indeed, provide a system whereby historians, journalists and others may

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make exceptions to general rules to permit our intelligence activities to move forward in an effective and secure manner. In such an atmosphere of review and control, the balance between the public's right to know and the Government's right to withhold must be reestablished. We would recommend that as part of this re-balancing effort serious consideration be given to exempting CIA and other intelligence organizations from the requirements of the FOIA.

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JOHN M. ASHBROOK
17TH DISTRICT
OHIO
1436 LONGWORTH HOUSE OFFICE BUILDING

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COMMITTEES:
JUDICIARY
EDUCATION AND LABOR
JOINT COMMITTEE ON CONGRESSIONAL OPERATIONS

Congress of the United States
House of Representatives
Washington, D.C. 20515

Executive Registry
75-3327

DD/A 75-3327

July 15, 1975

Director William E. Colby
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Director:

Since the recent amendments to the Freedom of Information Act press reports have described the strain placed on Federal bodies to accommodate requests for information from private sources.

As the Agency's prime responsibility is to the Administration, the task of supplying information to the public is of a minor priority.

I should like to receive your personal opinion as to the workability of the FOI Act in its present form, whether its requirements have adversely affected the Agency's basic responsibilities, and what, if any, amendments you might care to recommend.

Your consideration of this request will be much appreciated.

Sincerely,

John M. Ashbrook

John M. Ashbrook
Representative to Congress
17th District

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DD/A 76-6160

14 DEC 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Revisions to the Law on Freedom of Information

Sir:

In response to your request for suggestions on revising the law on freedom of information, I am attaching some comments on this subject which Gene Wilson put together. Certainly there are other issues in the law worth addressing, but the two biggest headaches we face in responding to the Freedom of Information Act are the time limits imposed on responses and the requirement to handle requests from foreign nationals. If revisions in these two areas alone can be accomplished, they would relieve the administrative burden on the one hand and ensure that CIA is not being harrassed, at least directly, by foreign intelligence services on the other.

/s/John F. Blake

John F. Blake

Attachment: a/s

25X1 O/AI/DDA [redacted] 13 Dec 76)
Distribution:
Original - Addressee
1 - DDCI
1 - ER
25X1 1 - OLC [redacted]
1 - OGC
1 - C/IPS
1 - DDA Subject
1 - DDA Chrono
1 - JFB Chrono
1 - EML Chrono

Circulated to Case Officers & IAs.

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SUGGESTIONS FOR REVISIONS TO FOIA

1. CIA would like to emphasize the point that the time limit on FOI responses is not realistic. Security and compartmentation based on "need-to-know" within the Agency necessitate a decentralized records system which cannot be accessed fully within ten days. Thus, in most cases we are not complying with the letter of the law in regard to deadlines. A routine search through one records system may provide leads to one or several others which will delay a final response further. In addition to such internal referrals, the number of documents found in a search will increase the processing time proportionately. There is always the danger of an erosion of security through human error caused in the haste to handle large volumes of material within the time limits. A more realistic deadline might be 45 calendar days, or a graduated scale dependent on the volume of records surfaced.

2. We suggest the Freedom of Information Act be amended to limit requesters to U.S. citizens. Although requests from foreign nationals have not been overwhelming to date, the potential for CIA becoming a worldwide information service exists should foreign journalists and intelligence services decide to use the FOI mechanism. The release of extensive information about foreign organizations or personalities could result in serious liaison problems with local services and raise anxiety among intelligence sources as to the confidentiality and protectability of their relationship with CIA. We have no specific instances to cite, but intelligence officers at all levels are concerned about the potentially harmful effects of freedom of information on our ability to recruit and retain agents. We have had reports of cases where people have declined to assist us for fear such a relationship would be exposed.

3. Congress should consider allowing agencies to charge for the true cost of FOI search and review. In calendar year 1975, CIA spent $1,392,000 in salaries to process FOI requests but collected fees of approximately $1,900. In an intelligence organization, the majority of documents are classified, so that detailed review is required to adequately delete sources and

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methods information before release. Although an agency may charge specified fees for search time, such monies represent only a fraction of the actual cost of services.

4. The release of information through the litigation process is a genuine concern for which we have no answer. The threat of litigation for failure to release information may conflict with the DCI's statutory obligation to protect ingelligence sources and methods. In a recent case, Klaus v. CIA (USDC-DC--Civil Action #76-1274), Judge Gerhard Gesell ruled that because of the court's lack of training or competence to judge the national security implications of release of classified material, the court should rely on the Government affidavits to determine the validity of classification. This was certainly a landmark in CIA's favor, but other cases may not be decided in this manner and could result in a conflict between the two laws.

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505
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OGC 75-4756
20 DEC 1975

Honorable Bella S. Abzug
Chairwoman
Government Information and Individual
Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Madame Chairwoman:

This is in response to your letter of November 10, 1975 requesting status of Freedom of Information requests now pending with this Agency as well as certain related information. In your letter you refer to numerous complaints from citizens regarding our failure to meet the specified time limits in the Freedom of Information Act. We are aware of this problem and have adopted all possible procedures to respond substantively to requests within the specified time limits. For numerous reasons explained in this letter, it is just impossible to meet these deadlines. In the case of persons requesting their own files, we do acknowledge receipt of the request within 10 days.

Requests for information by the public have been received pursuant to the Freedom of Information Act, the Privacy Act of 1974, and under the declassification procedures of Executive Order 11652. The following data reflects the total number of requests received from January 1, 1975 to November 20, 1975.

Total Requests Received and Registered

Freedom of Information Act	6,500
Privacy Act	293
Executive Order 11652	196
Total	6,989

Of this total figure 6,324 were requests by individuals for information pertaining to themselves. At present 1,715 requests are pending.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

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The total number of appeals received from January 1, 1975 to November 20, 1975 is 254. Of this figure 245 were filed pursuant to the Freedom of Information Act and 9 were filed pursuant to the criteria under Executive Order 11652. At present 55 appeals are pending.

The average number of final decisions made weekly is 188.45. This figure is reached on the basis of a study of the latest 20-week period. The weekly figures range from 77 to 492.

A study based on 767 requests made during September shows the following breakdown on the elapsed time needed to fully respond to requests.

No. Answered	Within
7	One week
199	Two weeks
252	Three weeks
21	Four weeks
10	Five weeks
12	Six weeks
7	Seven weeks
8	Eight weeks
10	Nine weeks
7	Ten weeks
5	Eleven weeks

As of November 20, 1975, 229 requests were not fully closed. In many of these cases, the requester was asked for additional information to assure ourselves of the identity of the requester, and we are awaiting replies. In other instances the delay is caused by the need to clarify the description of the information requested or to get assurances with regard to the payment of fees for nonpersonal record requests.

As a matter of policy, the CIA has waived all fees for requests by individuals for information pertaining to them and has waived search fees on all but 7 percent of the remaining substantive requests.

A number of factors, including the large number of requests received, have contributed to our inability to respond to all requests within 10 days. The number of man-hours devoted to Freedom of Information and Privacy Acts requests is equivalent to over 100 full-time employees and is steadily increasing. In

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addition, the various congressional committees investigating intelligence activities have requested large amounts of records which must be processed by those components also involved in Freedom of Information duties.

Another factor is the necessarily time-consuming process involved in searching the various CIA record systems for information about individuals. As I noted in my testimony before your Subcommittee on March 5 of this year, the CIA does not generally maintain "files" on individuals nor do we maintain any central index reflecting references to all Agency recordholdings on any one individual. Information about or incidental references to individuals may be located in various record systems. In our publication of record systems in the Federal Register pursuant to the provisions of the Privacy Act, we list 57 such systems--most dealing with personnel or security matters. If an individual makes a request for any or all information we have held which refers to such person, we must search a large number of separate record systems.

A thorough search of all record systems which could possibly contain reference to an individual is a lengthy process frequently taking more than 10 days even when no records exist. Often, where a record does exist, the information is stored in the Agency Records Center and at least 2 or 3 days are required to retrieve it.

Although the great majority of requests received have been from those individuals seeking access to information pertaining to themselves, a number of requests are for substantive data which may involve thousands of pages of records and the mere gathering together of such data, not to mention its review, is again a lengthy process. Where classified information is involved, a referral to the agency of origin is required under Executive Order 11652. The mechanics of such referrals require additional time.

A thorough appellate review of initial denials also by necessity often consumes more time than the 20 days allotted by the Act. Although the information at issue has been retrieved and initially reviewed before the appellate stage, each appeal is individually considered by a senior official or in some cases by the entire Information Review Committee, which consists of 7 of the most senior officers of the CIA. In addition, 7 full-time attorneys have been assigned to Freedom of Information and Privacy Acts matters. These attorneys advise on each appeal and each appeal is treated in a de novo manner resulting in a complete review of all previous determinations. While this process is time-consuming, I believe that it is entirely consistent with the spirit and letter of both Acts.

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Although we are hopeful that the inordinate number of inquiries to the CIA may taper off thus enabling quicker responses to each request, more reasonable time limits under the Freedom of Information Act seem justified. Freedom of Information requests involving thousands of documents or numerous series of publications should not be treated under the same time constraints which apply to requests for a single readily identifiable document but should be keyed to the volume of records requested and the complexity of the request.

Sincerely,

W. E. Colby

W. E. Colby
Director

OGC/LJK/CCB
Distribution:
Original - Addressee
1 - DCI
1 - ER via Ex Secty.
1 - DDCI
1 - DDA
1 - OLC
1 - OGC SUBJ: FREEDOM OF INFORMATION ACT
1 - LJK Signer
1 - OGC Chrono

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JOHN CONYERS, JR., MICH.
TORBERT H. MACDONALD, MASS.
JOHN E. MOSS, CALIF.
MICHAEL HARRINGTON, MASS.
ANDREW MAGUIRE, N.J.
ANTHONY MOFFETT, CONN.

NINETY-FOURTH CONGRESS

225-3741

Congress of the United States

House of Representatives

Executive Registry
175-9431

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

November 10, 1975

Mr. William E. Colby
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

It has come to our attention, through numerous complaints from citizens, that requests for information directed to the Central Intelligence Agency are not being responded to within the 10-day requirement mandated by the Freedom of Information Act as amended.

While I recognize that you are receiving a number of requests for information at this time, the language of the Act does not permit additional time for this purpose.

Please supply me with a report on the status of Freedom of Information requests now pending, including the number pending, the number of appeals pending, the average length of time it takes to process a request from receipt to final decision, the number of final decisions made weekly, and the number of requests for personal files out of the total number of requests. Also, please indicate what factors might be contributing to the inability of the CIA to respond to requests within the 10-day limit.

Finally, what steps do you believe are necessary for the CIA to take to insure compliance with the law?

Sincerely,

Bella Abzug

BELLA S. ABZUG
Chairwoman

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OLC 75-2004/a

Executive Registry
75-3975-9/2

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 OCT 1975

Honorable Edmund S. Muskie, Chairman
Subcommittee on Intergovernmental Relations
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am sending herewith the responses of the Central Intelligence Agency to the questions posed by the Subcommittee on Intergovernmental Relations regarding CIA's implementation of Executive Order 11652. I hope our responses will assist the Subcommittee in its study.

We at CIA are dedicated to conducting our activities in a manner consistent with America's open society. The view once held--both inside and outside CIA--that all Agency activities and policies were required to be kept secret, has been replaced by a more pragmatic approach to secrecy. Illustrative of this fact is the 50% reduction in the number of materials we are classifying since the advent of E.O. 11652. Today, without question, CIA is by far the most open intelligence service in the world. Nevertheless, secrecy remains a prerequisite to success in many of our activities, a principle I fear has not been adequately considered in the recent rush to reveal episodes of CIA's past and present.

In conjunction with its study of the classification of information by our Government, I would urge the Subcommittee to also investigate the effect of the recent amendments to the Freedom of Information Act on Federal agencies. The worthy purpose of the Act--to inform our citizenry--should not disguise the adverse effect the amendments have had on the discharge of Governmental business. The impact on CIA is such that I believe it is quite possible that this Agency will not be able to fully and effectively perform the functions and duties for which it was created unless legislative relief is forthcoming. Provisions such as the ten-day deadline for responding to requests (even those involving hundreds of thousands of documents), and the unlimited number of persons who can request documents (even known agents of foreign intelligence services), are particularly troublesome. I believe it is time a responsible Congressional body re-examined the advisability of this Act, in light of the experience of the past several months.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

Enclosure

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AMERICAN REVOLUTION BICENTENNIAL 1776-1976

5-E-11

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28 JUL 1976

MEMORANDUM FOR: Legislative Counsel

25X1 ATTENTION :

FROM : [redacted]
Assistant for Information, DDA

SUBJECT : Addendum to the CY 1975 Report to Congress on CIA Implementation of the Freedom of Information Act

In response to your request for suggestions on amendments in Freedom of Information legislation, I prepared the attached addendum. It incorporates the ideas of the Information and Privacy Staff and the DDO, but certainly represents the feelings of the other directorates on the Freedom of Information Act. If you need any further information, please let me know. 25X1

[redacted]

Attachment: a/s

25X1 O-AI/DDA: [redacted] (28 July 1976)
Distribution:
Original - Addressee
1 - DDA Subject (FOI-Reports)
1 - Signing Official
1 - EL Chrono

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ADDENDUM TO CIA REPORT ON FOI
CY 1975

CIA wishes to reemphasize the point that the time limit on FOI responses is not realistic. Security and compartmentation based on "need-to-know" within the Agency necessitate a decentralized records system which cannot be accessed fully within such time constraints. There is also an erosion of security through human error caused by the haste required to handle the volume of material within the unreasonable time limits. A more realistic deadline might be 45 calendar days, which, in most cases, would provide adequate time for more thorough search and review.

We suggest the FOIA be amended to limit requesters to U.S. citizens. Although requests from foreign nationals have not been overwhelming, the potential for CIA becoming a worldwide information service exists should foreign journalists and intelligence services decide to use the FOI mechanism.

Congress should consider allowing agencies to charge for the true cost of FOI search and review. In an intelligence organization, the majority of documents are classified, so that detailed review is required to adequately delete sources and methods information before release. Although an agency may charge specified fees, such monies represent only a fraction of the actual cost of services.

In terms of the expense of the FOIA, an additional concern for the Congress is that American tax dollars are diverting agencies' manpower to benefit select few researchers who are continuous customers. Equal service is provided to convicted, incarcerated felons; fugitives from justice; known Communists; persons whose stated purpose is to harass and destroy U.S. intelligence; or, potentially, foreign intelligence services.

A real concern to intelligence officers as a result of the FOIA is the ability to recruit and retain sources. We do have cases where people have declined to assist us for fear such a relationship would be exposed. If CIA is to continue its mission, we must be able to protect our sources of information.

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

The Honorable Walter F. Mondale
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report from the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1976.

During the past year, 3,490 requests for records were logged and put into processing by the Agency, of which 761 were submitted under the Freedom of Information Act. An additional 1,002 requests were received during 1976 but not formally processed pending receipt of additional information from the requesters. These 1,002 letters of request were, without exception, requests for access to personal records, which, under CIA regulations, are now processed under the provisions of the Privacy Act of 1974 rather than the Freedom of Information Act. A summary of Agency activity in this regard, including Privacy Act and Executive Order 11652 requests as well as Freedom of Information requests, is provided in the statistical table below. You will note that the overall processing backlog was reduced by 323 cases during the year.

	FOIA	PA	EO
1. Requests carried over from CY 1975	1,130	356	68
2. Requests logged during CY 1976	761	2,356	373
3. Total final responses during CY 1976	1,355	2,114	344

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AMERICAN REVOLUTION BICENTENNIAL 1776-1976

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a.	Granted in full	148	154	81
b.	Granted in part	562	404	220
c.	Denied in full	122	56	37
d.	No record available and misc. (e.g., canceled or withdrawn)	523	1,500	6
4.	Requests carried over to CY 1977	536	598	97

In addition to the above, the Agency responded during 1976 to numerous other requests from members of the public for unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies charged with responsibility for the distribution of such CIA products.

Unless Freedom of Information requests happened to duplicate those previously processed, the Agency was seldom able to respond within the 10 working days stipulated by the Act--or indeed within the 20 days permitted by the Act when certain conditions are met. A number of factors, some of which are perhaps unique to this Agency, have contributed to this, including the following considerations:

1. The heavy volume of requests received during 1975 (i.e., 6,609) resulted in processing backlogs which persist to this date. In an effort to be fair to all, requests, unless exceptional circumstances prevail, are processed on a "first come, first served" basis.

2. Because of the specialized missions of various components and the security requirement for compartmentalization, the CIA has no central file or index to its recordholdings. A search for "all" information on a given topic may therefore entail the searching of several file systems, under different command authorities and with varying degrees of retrieval capabilities.

3. If "hits" made during the index search phase relate to inactive records, a not infrequent occurrence, it takes two or three days to retrieve them from remote storage in order that their relevance can be determined.

4. Searches in one component will often surface records originated by, or of subject-matter interest

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to, other components or other departments or agencies. The time required for reproduction and referral of such documents to the organizations having cognizance further delays completion of processing.

5. The review of security-classified records for releasability is a very time-consuming process and, in the case of intelligence records, too important to be done in haste. A single request can necessitate the classification review of hundreds or thousands of documents, each of which must be carefully examined by a limited number of qualified experts, many of whom are relatively senior officers with numerous other demands placed upon their time.

6. Finally, the growing number of Freedom of Information appeals (211) and law suits (37) during 1976 has resulted in the diversion of available manpower from the initial processing of requests.

Be assured that the Agency has made, and continues to make, every effort to comply fully with both the letter and spirit of the Freedom of Information Act consistent with the Director's statutory mandate to protect intelligence sources and methods from unauthorized disclosure. Despite the sizable commitment of resources devoted to administration of the Act, however, we have during the past year been unable to eliminate our processing backlogs and have rarely been able to meet the statutory deadlines for responses to either requests or appeals. A considerable increase in resources would be necessary to meet the stipulated deadlines, and current budgetary limitations and personnel ceilings preclude such action. More reasonable time limits for replies to requests and appeals seem clearly justified. We urge therefore that the Congress amend this aspect of the law so that the time constraints are reasonable and take into account both the volume of records involved in particular requests or appeals and their possible sensitivity with respect to national security matters.

Respectfully,

John F. Blake
Deputy Director
for
Administration

Enclosure

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FREEDOM OF INFORMATION ACT

ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1976

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 684

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

Exemption invoked	Number of times (i.e., requests) invoked
(b)(1)	493
(b)(2)	106
(b)(3)	594
(b)(4)	11
(b)(5)	123
(b)(6)	295
(b)(7)	230
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., requests) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	594

(c) Other authority: None

In 16 instances, requesters were asked to contact other agencies, or their requests were referred directly to other agencies, when it was ascertained that the records sought were not under CIA jurisdiction. Twenty other requests were withdrawn after processing commenced. Finally, 126 cases were canceled because of the failure of the requesters to respond to letters asking for clarification, additional identifying information, release from third parties, fee deposits, etc. We do not regard any of the above as denials inasmuch as the Agency was prepared to act on the requests. They are therefore not included in the 684 figure given in answer to question 1.

3. Names and titles of each person who is responsible for the denial of records requested and the number of instances of participation of each:

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Continued

3. Continued

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Name	Title	Number of instances of participation
25X1	Deputy Director of Medical Services	1
	Associate Deputy Director for Operations	2
	Director of Medical Services	2
	Director of Technical Services	8
	Chief of Information Services Staff	485
	Assistant Legislative Counsel	9
	Executive Officer, Office of Scientific Intelligence	1
	Inspector General	2
	Deputy Director of National Photographic Interpretation Center	1
	Deputy Director of Personnel	4
	Director of Development and Engineering	1
	Deputy Director of Communications	3
	Deputy Director for Science and Technology	1
	Chief, Information Review Group, Office of Security	42
	Director of Central Reference	6
	Chief, Intelligence Production Staff, Office of Scientific Intelligence	1
	Deputy Director of Security	1
	Director of Economic Research	1
	Executive Secretary to the Director of Central Intelligence	1
	Assistant to the Director	2
	Executive Assistant, Office of Communications	1
	Director of Security	38
	Director of Research and Development	4
	Director of Communications	1

Continued

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3. Continued

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25X1

Director of National Photographic Interpretation Center	1
Administrative Officer for Director of Central Intelligence	1
Special Assistant to the Director of Medical Services	2
Director of Personnel	45
Director of Security	38
Chief, Plans and Resources Staff, Office of Training	2
Deputy Director of Security for Policy and Management	44
Deputy Director for Financial Operations, Office of Finance	1
General Counsel	1
Director of Logistics	1
Associate General Counsel	2
Deputy Director of Economic Research	5
Deputy General Counsel	2
Deputy Director of Current Intelligence	5
Deputy Director of Logistics	1
Director of Foreign Broadcast Information Service	3
Executive Officer, Directorate of Science and Technology	1
Director of Training	15
Deputy Director of Training	3
Deputy Director of Security	38
Special Assistant to the Deputy to the DCI for the Intelligence Community	2
Assistant to the Director	9
Executive Officer, Office of Finance	1
General Counsel	6
Director of Scientific Intelligence	2
Information and Privacy Coordinator	4

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4. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 211

(a) Number of appeals in which, upon review, request for information was granted in full: 3

(b) Number of appeals in which, upon review, request for information was denied in full: 41

(c) Number of appeals in which, upon review, request was denied in part: 95

5. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

Exemption invoked	Number of times (i.e., appeals) invoked
(b)(1)	92
(b)(2)	27
(b)(3)	115
(b)(4)	0
(b)(5)	21
(b)(6)	79
(b)(7)	51
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

Statutory citation	Number of times (i.e., appeals) invoked
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	115

(c) Other authority: None

In two instances, it was determined, after logging the appeals, that the records under contention were not under CIA jurisdiction, and the requesters were thereupon advised to direct their appeals to the appropriate agencies. In another case, the denied documents which were the subject of the appeal were discovered to be not germane to the request. Since no records were denied by this Agency, the above appeals were not included in the figures given in response to questions 4(a), (b) and (c), above.

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6. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

Name	Title	Number of instances of participation
25X1 [redacted]	Deputy Director for Administration	54
	Associate Deputy Director for Operations	2
	Deputy to the DCI for National Intelligence Officers	1
	Deputy Director for Science and Technology	1
	Associate Deputy Director for Administration	6
	Associate Deputy Director for Administration	2
	Deputy Director for Operations	48
	Deputy Director for Intelligence	1
	Associate Deputy Director for Operations	1
	Associate Deputy Director for Science and Technology	1
	Deputy Director for Operations	39

7. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None

8. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

No amendments were published in 1976.

9. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab A.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1976 was $10,035.10.

10. A. Availability of records:

Continued

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As the CIA does not promulgate materials as described in 5 U.S.C. 552 (a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs:

During the past year, the Agency expended 181,995 man-hours (87.5 man-years) in processing requests received under the Freedom of Information and Privacy Acts and under the mandatory classification review procedures of Executive Order 11652. Of this total, 60,484 man-hours were by subprofessional personnel, and the remaining 121,511 were by professional personnel. The average grade of subprofessional personnel involved in this activity is estimated to be GS-6/Step 3, and that of professional personnel to be GS-12/Step 5. The total salary expenditures for calendar year 1976, based upon the current rates of $5.32 per hour for subprofessional labor and $11.14 per hour for professional labor, would therefore amount to $1,675,407.42, of which approximately $741,700 can be attributed to administration of the Freedom of Information Act.

It should be emphasized that the above figures are very conservative. If official holidays, annual and sick leave benefits, and overtime payments were taken into account, the salary costs would be increased by at least 15 percent and the actual manpower devoted to these programs would approximate 100 man-years. Moreover, Government contributions to insurance, hospitalization, and retirement programs would raise the total personnel cost by an additional 10 percent.

No attempt has been made to calculate such costs as office space, equipment rentals, office supplies, EDP support, etc. It is believed, however, that these amounts would be minor in comparison with the salary figures provided above.

C. Compliance with time limitations for agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

Continued

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The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were not in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have therefore explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 14

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: None

D. Internal Memoranda:

25X1 A copy of [redacted] was submitted with the Annual Report for 1975. We anticipate the publication of a handbook in 1977 which will cover Agency procedures in considerable detail. This will be provided as an attachment to next year's submission.

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25X1 IPS: [redacted] (28 February 1976)/7486

Distribution:

Original - Addressee, w/Report and Tab
1 - IPS Chrono, w/Report
1 - IPS Subject, w/Report and Tab
2 - DDA, w/Report
1 - OGC, w/Report
1 - OLC, w/Report
1 - AI/DDA, w/Report
1 - DDS&T/FIO, w/Report
1 - DDO/FIO, w/Report
1 - DDI/FIO, w/Report

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MEMORANDUM FOR: PRM/NSC - 11 Subcommittee Members

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Problems Confronting the CIA Resulting From the Freedom of Information Act

1. This memorandum describes some problems faced by the CIA resulting from the Freedom of Information Act (FOIA) and suggests that legislative relief be sought. Attached to this memorandum is a copy of CIA's Annual Report to Congress on the Agency's administration of the FOIA during calendar year 1976. A significant portion of Agency resources, particularly in terms of the energies of senior management, has been devoted to the administration of the FOIA, while very little information of interest to the public has, in fact, been released through the mechanism of the Act. Unless legislative relief is obtained ~~it can be anticipated that~~ the continued diversion of CIA resources might well impair the Agency's ability to carry out its functions.

2. Before the effective date of the 1974 amendments to the FOIA which amended the provisions of exemption (b)(1), the CIA received very few requests for documents. In fact during 1974 only 193 requests -- mostly requests for declassification pursuant to the procedures of Executive Order 11652 -- were processed. A staff of five people, whose primary responsibility was to monitor the Agency's classification system, was sufficient to handle all these requests.

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3. The amendments of the FOIA in February 1975 and the strong public interest in CIA which developed at about the same time resulted in a sharp increase of requests for CIA records. To date, the Agency has received 15,287 requests and has 70 employees engaged full-time and 180 employees engaged part-time working on processing FOIA requests. Because of this volume, and despite earnest efforts, it has not been possible to respond to FOIA requests within the statutory time frame.

4. It should be emphasized that these figures do not by themselves reflect the most burdensome requirement of the Act, i.e., the time devoted by senior executives of the Agency. Decision-making on FOIA matters is maintained at a high level to ensure that they receive the attention that the law demands. Appeals from initial Agency determinations are handled by the Deputy Directors of the CIA with the assistance of senior staff officers and attorneys from the Office of General Counsel. The number of appeals has steadily increased (now approximately 640 cases) and the time devoted to these matters by the CIA Deputy Directors has increased proportionately. The resulting diversion of these senior officials' energies from their primary duties to manage the business of the Agency is clearly undesirable.

5. ~~Also relevant is that~~ The amended section (a)(3) of the Act requires only that a request be "reasonably described." Thus, a precise description of records sought is no longer necessary and requests for documents are now being received under broad, albeit identifiable, descriptions. (For example, one request calls for "all files on" approximately 30 specified topics mentioned in the Church Committee Report.) A particularly burdensome requirement of the amended Act is that "reasonably segregable portions of documents must be released." Because of this provision the review process ~~is greatly aggravated in that each~~ consumes an inordinate amount of time document must be examined in its entirety to determine whether segregable portions can be released.

6. The search and review of intelligence documents involves more time and effort than is required in the review of other types of documents. Generally, the releasability of an intelligence document cannot be determined by a review of the document alone. In order to ensure the protection of intelligence sources and methods which may have been involved in the subject matter of the requested document, the reviewer must frequently examine other documents to assure that such intelligence sources and methods are not compromised through the release of the requested document. This additional review is most critical and must be done carefully.

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7. The judicial review procedures in the FOIA require significant Agency effort in the preparation of FOI litigation. Pursuant to the ruling of a leading FOI case (Vaughn v. Rosen, 4884 F.2d 820 D.C. Cir. 1973; cert. denied) the government must, in order to justify withholdings under the Freedom of Information Act, formulate

> a system of itemizing and indexing that would correlate statements made in the Government's refusal justification with the actual portion of the documents.
>
> Such an indexing system would subdivide the document under consideration into manageable parts cross-referenced to the Government's justification.

The burden of complying with Vaughn in cases involving large numbers of classified documents is obvious.

8. The amended Act, in overruling the decision of the United States Supreme Court in EPA v. Mink, 410 U.S. 73 (1973), authorizes a federal district court to make a de novo determination whether material, claimed to be exempt under the first exemption, is properly classified substantively as well as procedurally. However, the Court is not expected to substitute its judgment for that of the Executive Branch on the substantive question whether the material in issue should or should not be classified. Rather, the question to be determined by the Court is whether the appropriate Executive Branch officials have adhered to the procedural requirements and have properly applied the substantive criteria, set forth in Executive Order 11652, in arriving at their decision. The legislative history of the 1974 amendments to the Freedom of Information Act establishes this principle. The conference report on the Act states, at page 12:

> [T]he Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse effects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making de novo determinations in section 552(b)(1) cases under the Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.

9. The case law developed as a consequence of FOIA litigation involving the CIA clearly supports the proposition that the courts' inquiry into classification questions is limited. This principle has, perhaps, been most

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effectively articulated by Judge Gesell of the United States District Court for the District of Columbia in Klaus v. CIA, Civil Action No. 76-1274, November 4, 1976:

> If, on the other hand, the Court is required to satisfy itself that disclosure is likely to affect the national security adversely, difficulties are presented. Obviously, a Court aided only by an in camera document examination does not have the training or competence to make a judgment as to the national security implications of classified material. An ex parte hearing with Agency personnel would be required, resulting in a distasteful Star Chamber -- like proceeding from which the guarantees of trustworthiness achieved by confrontation and cross-examination are absent. There is, moreover, no guarantee that such a hearing could, in the last analysis, give adequate guidance. The national security issue is necessarily speculative. Intelligence deals with possibilities. Our knowledge of the attitudes of and information held by opponents is uncertain. Determinations of what is and what is not appropriately protected in the interests of national security involves an analysis where intuition must often control in the absence of hard evidence. This intuition must often control in the absence of hard evidence. This intuition develops from experience quite unlike that of most Judges.

10. The Circuit Court of Appeals for the District of Columbia has also squarely supported this principle in Weissman v. CIA, et al. (No. 76-1566; January 6, 1977; USCA D.C. Cir.) in which it says, at page 13, slip opinion:

> Additional considerations apply to in camera proceedings under exemption (b)(1) where classification of documents is involved. Few judges have the skill or experience to weigh the repercussions of disclosure of intelligence information. Congress was well aware of this problem, and when it amended the FOIA to permit in camera inspection in exemption (b)(1) cases, it indicated that the court was not to substitute its judgment for that of the agency. If exemption is claimed on the basis of national security the District Court must, of course, be satisfied that proper procedures have been followed, that the claim is not pretextual or

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unreasonable, and that by its sufficient description the contested document logically falls into the category of the exemption indicated. It need not go further to test the expertise of the agency, or to question its veracity when nothing appears to raise the issue of good faith.

11. Protection of information pertaining to intelligence sources and methods is effected by §102(d)(3) of the National Security Act of 1947 and §6 of the Central Intelligence Agency Act of 1949, (50 U.S.C. 403(d)(3) and 403g). The legislative history of the FOIA includes both of the above cited statutory provisions among its list of non-disclosure statutes encompassed by exemption (b)(3) of the Act. United States district courts, without exception, have also recognized these statutes as within the purview of exemption (b)(3) of the Freedom of Information Act. In addition, the United States Court of Appeals for the District of Columbia Circuit (Weissman, op cit.) and the Third Circuit, (Richardson v. Spahr, 416 F.Supp. 752 (W.D. Pa., 1976); aff'd ___ F.2d ___ (3rd Cir., 1977) have afforded similar recognition.

12. Thus, it seems well settled that the Congress as well as the courts have recognized that classified information relating to intelligence matters and information pertaining to intelligence sources and methods is exempted from disclosure under the FOIA.

13. Nevertheless, the Act, as it applies to the CIA, results in an undesirable situation which the drafters could not have anticipated. When FOIA requests reach CIA files on intelligence operations, each document in such files must be reviewed word-by-word to determine whether any portion can be released. This requirement is not only extremely burdensome on the Agency for the reasons outlined above, but it is wasteful and almost absurd when files on intelligence operations are requested and when, as is frequently the case, it is clear even before the review begins, that no material of significance can be released in response to the request because it is classified or withholdable pursuant to the sources and methods statute. (For example, a recent request for all records on the "Berlin Tunnel Operation" will involve a search and review effort of some 1,400 linear feet of file material. While the search and review of this material is likely to consume many months, given the nature of the records, it can be predicted with reasonable certainty that virtually nothing can be released.)

14. Recognizing that the public may indeed have substantial interest in access to certain CIA information (for example, the CIA Climatological Report of 1974), it is clear that a total CIA exemption from the FOIA is undesirable. In our opinion the public's need and the equities of the Agency

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might be well served by a provision which would serve to eliminate essentially unproductive expenditure of Agency man-hours and the undesirable diversion of senior CIA personnel from their primary responsibilities in a process which predictably will result in an insignificant release of information. We believe ~~senior~~ consideration should be given to such a revision, which ~~as presently written~~ would not diminish the public information benefits that flow from the FOIA, either as intended by the Congress or as interpreted by the courts.

Seriously

Anthony A. Lapham

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25X1

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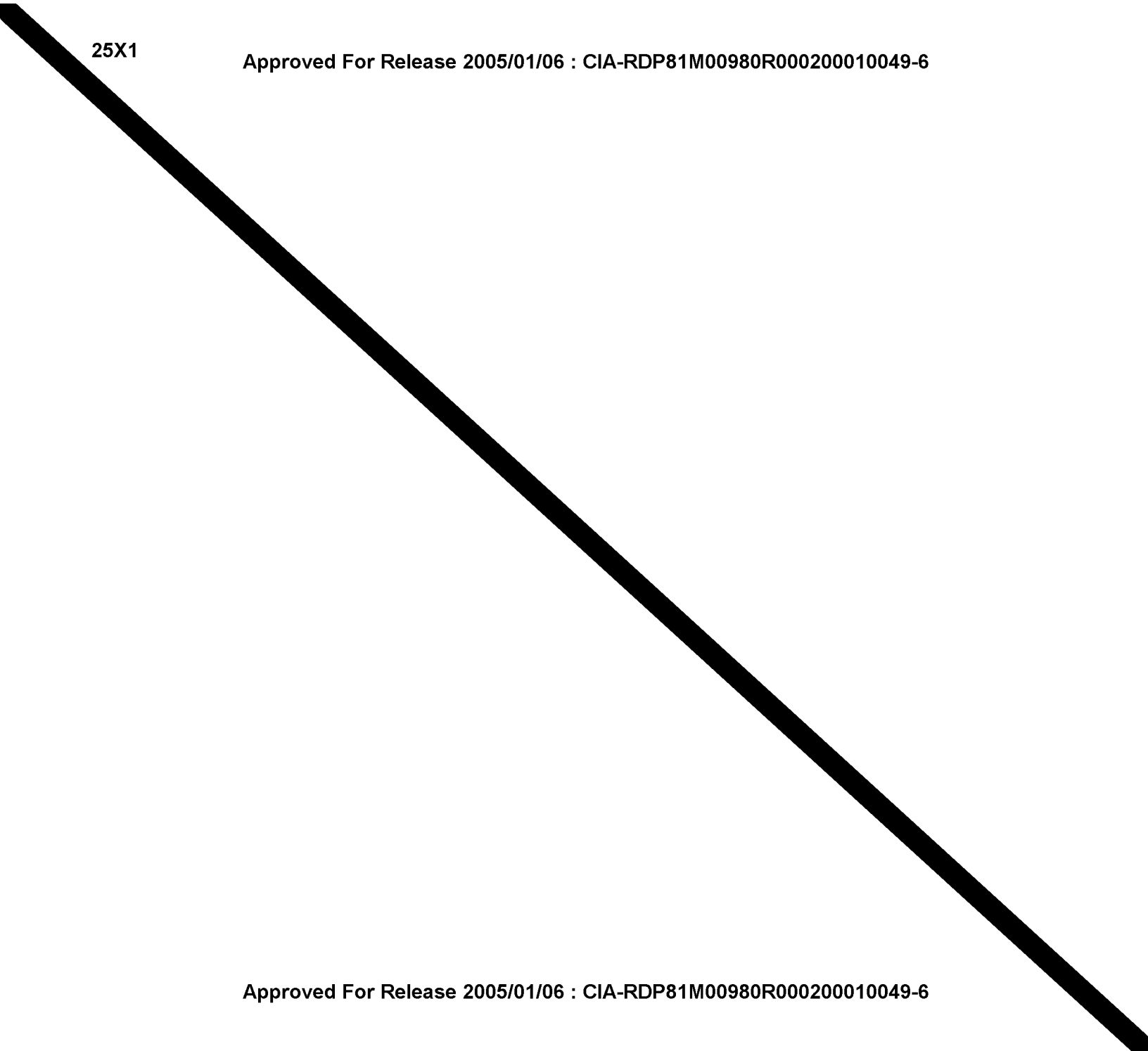

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ROUTING AND RECORD SHEET

SUBJECT: (Optional) OGC 77-2293 4-11-77

FROM: Office of Legislative Counsel
6C19 HQS

EXTENSION

NO. 25X1

DATE 08 APR 1977

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. OGC 7D07 HQS ATTN:	4-11-77			This letter on FOIA should look very familiar to you. We need OGC to coordinate on it before sending it on to Admiral Turner for his signature.
2.				
3. OLC 8X3				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

25X1 25X1 25X1

Office of Legislative Counsel

Bill: Fine, except I removed the parenthetical sentence on p.1. The example was not precisely correct as stated and, in order to explain how horrendous it, in fact, is, I would have to expand it to a whole paragraph — so suggest it's best deleted.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Office of Legislative Counsel
6C19 HQS

EXTENSION | NO.

25X1

DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. OGC ATTN: Tony Lapham	4/18	4/18	OGC	Attached for your signature is a letter to each of our respective legislative oversight committees outlining the problems faced by CIA as a result of the FOIA and suggesting certain legislative relief. The letters have been coordinated with OGC and DDA. George L. Cary Legislative Counsel
2. SA/DDCI				
3. DDCI				
4. DCI				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

25X1

George:

I have no quarrel with the statement of the problem, but does the language on page 5 put us in the position of proposing legislation without OMB clearance? If so, we could simply end with the statement that consideration should be given to an appropriate revision of the statute, without however putting forward the exact wording of an additional FOIA exemption. I would prefer that course even if lack of OMB clearance is not a consideration.

Anthony A. Lapham

To 2, 3 and 4:

The package has been revised in line with Mr. Lapham's preference.

George L. Cary

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

25X1 FROM: [redacted]
Assistant for Information, DDA
7D-02, Hqs.

EXTENSION | NO.

DATE: 11 April 1977

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
25X1 1. OLC ATTN: [redacted] 6C-19, Hqs.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Office of Legislative Counsel
6C19 HQS

EXTENSION

NO. 25X1

DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. OGC ATTN: Tony Lapham				Attached for your signature is a letter to each of our respective legislative oversight committees outlining the problems faced by CIA as a result of the FOIA and suggesting certain legislative relief. The letters have been coordinated with OGC and DDA. George L. Cary Legislative Counsel
2. SA/DDCI				
3. DDCI				
4. DCI				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

25X1

FORM 3-62 610 USE PREVIOUS EDITIONS

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Office of Legislative Counsel

EXTENSION

NO. DD/A 75-4026

DATE 25 August 1975

25X1

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DDA 7D26 Hq.	27 AUG	1975		For your concurrence prior to our submitting to the Director for approval and signature, is a proposed reply to Representative Ashbrook inquiring as to our implementation of the recent amendments to the Freedom of Information Act, and any suggestions we may have for any further amendments.
2.				
3.				
4. File				
5.				This was coordinated with [redacted] 25X1 and [redacted] IRS. If you feel that review by the DD's is necessary, we will prepare required copies for their consideration which should be this week. 25X1
6.				
7.				
8.				
9.				
10.				A copy of the attached was sent to OMB today at their request, for a preliminary review and clearance prior to forwarding to Representative Ashbrook. 25X1
11.				
12.				[redacted] Assistant Legislative Counsel
13.				Attachment
14.				
15.				

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FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☐ CONFIDENTIAL ☐ SECRET

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:	EXTENSION	NO.
Office of Legislative Counsel 7D35 Hqs.		
	DATE	12 August 1975

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. 25X1 [redacted]	8/14	8/14		For your comments and concurrence. Please respond soonest. 25X1
2.				[redacted]
3.				Assistant Legislative Counsel
4.				
5.				
6. File				OLC notified of concurrence, 8/14, [signature]
7. OLC				
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